

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 73
92ND GENERAL ASSEMBLY

Reported from the Committee on Financial Services, February 12, 2003, with recommendation that the House Committee Substitute for House Bill No. 73 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0499L.04C

AN ACT

To repeal section 166.435, RSMo, and to enact in lieu thereof thirteen new sections relating to higher education savings programs.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 166.435, RSMo, is repealed and thirteen new sections enacted in lieu thereof, to be known as sections 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525, 166.530, 166.540, 166.545, 166.550, 166.555, and 166.556, to read as follows:

166.435. 1. **Notwithstanding any law to the contrary**, the assets of the savings program held by the board and the assets of any similar [savings program] **programs sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof and** qualified pursuant to Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the fund [by any participant or beneficiary shall not be subject to state] **or any similar program sponsored, held, or otherwise authorized by law by this state or any other state or subdivision thereof and qualified pursuant to Section 529 of the Internal Revenue Code** by any participant or beneficiary shall not be subject to state income tax **imposed pursuant to chapter 143, RSMo**, and shall be eligible for any benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the [savings program established pursuant to sections 166.400 to 166.455, the

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

14 provisions of this section] **programs sponsored, held, or otherwise authorized by law by this**
15 **state or any other state or subdivision thereof** and Section 529 of the Internal Revenue Code,
16 and no exemption shall apply to assets and income expended for any other purposes. Annual
17 contributions **made to the savings program held by the board and any similar program**
18 **sponsored, held, or otherwise authorized by law by this state or any other state or**
19 **subdivision thereof qualified pursuant to Section 529 of the Internal Revenue Code**, up to
20 and including eight thousand dollars [made to the savings program] **for the taxpayer**, shall be
21 subtracted [from] **in determining** Missouri adjusted gross income pursuant to section 143.121,
22 RSMo.

23 2. If any deductible contributions to or earnings from any [savings account] **such**
24 **program referred to in this section** are distributed and not used to pay qualified higher
25 education expenses or are not held for the minimum length of time established by the [board]
26 **appropriate state or political subdivision authority**, the amount so distributed shall be added
27 to the Missouri adjusted gross income of the participant, or, if the participant is not living, the
28 beneficiary.

29 3. The provisions of this section shall apply to tax years beginning on or after January
30 1, [1999] **2003**.

166.500. Sections 166.500 to 166.556 shall be known and may be cited as the
2 **"Missouri Higher Education Deposit Program".**

166.505. Notwithstanding the provisions of sections 166.400 to 166.456 to the
2 **contrary, this program is established as a nonexclusive alternative to the Missouri higher**
3 **education savings program and any participant may elect to participate in both programs**
4 **subject to aggregate Missouri program limitations.**

166.510. As used in sections 166.500 to 166.556, except where the context clearly
2 **requires another interpretation, the following terms mean:**

3 (1) **"Beneficiary", any individual designated by a participation agreement to**
4 **benefit from payments for qualified higher education expenses at an eligible educational**
5 **institution;**

6 (2) **"Benefits", the payment of qualified higher education expenses on behalf of a**
7 **beneficiary from a deposit account during the beneficiary's attendance at an eligible**
8 **educational institution;**

9 (3) **"Board", the Missouri higher education deposit program board established in**
10 **section 166.515;**

11 (4) **"CAMELS rating", the Capital, Assets, Management, Earnings, Liquidity, and**
12 **Sensitivity rating system of the Federal Financial Institution Examination Counsel**
13 **(FFIEC);**

- 14 (5) "Eligible educational institution", an institution of postsecondary education as
15 defined in Section 529(e)(5) of the Internal Revenue Code;
- 16 (6) "Financial institution", a depository institution and any intermediary that
17 brokers certificates of deposits;
- 18 (7) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;
- 19 (8) "Missouri higher education deposit program" or "deposit program", the
20 program created pursuant to sections 166.500 to 166.556;
- 21 (9) "Participant", a person who has entered into a participation agreement
22 pursuant to sections 166.500 to 166.556 for the advance payment of qualified higher
23 education expenses on behalf of a beneficiary;
- 24 (10) "Participation agreement", an agreement between a participant and the board
25 pursuant to and conforming with the requirements of sections 166.500 to 166.556; and
- 26 (11) "Qualified higher education expenses", the qualified costs of tuition and fees
27 and other expenses for attendance at an eligible educational institution, as defined in
28 Section 529(e)(3) of the Internal Revenue Code, as amended.

166.515. 1. There is hereby created the "Missouri Higher Education Deposit
2 Program". The program shall be administered by the Missouri higher education deposit
3 program board which shall consist of the director of the Missouri division of finance who
4 shall serve as chairman, the commissioner of the department of higher education, the
5 commissioner of the office of administration, and four private members appointed by the
6 governor with the advice and consent of the senate who have demonstrable experience and
7 knowledge in the areas of deposit rate determination and placement of depository
8 certificates of deposit or other deposit investments. The four private members shall be
9 appointed to serve for terms of four years from the date of appointment, with the exception
10 of initial private members. Initial members shall serve terms as follows: one private
11 member shall serve a one-year term; one private member shall serve a two-year term; one
12 private member shall serve a three-year term; and one private member shall serve a four-
13 year term. Once the initial terms have been completed, all such private members may be
14 appointed to serve for an additional four-year term. The members of the board shall be
15 subject to the conflict of interest provisions in section 105.452, RSMo. Any member who
16 violates the conflict of interest provisions shall be removed from the board.

17 2. In order to establish and administer the deposit program, the board, in addition
18 to its other powers and authority, shall have the power and authority to:

- 19 (1) Develop and implement the Missouri higher education deposit program and,
20 notwithstanding any provision of sections 166.500 to 166.556 to the contrary, the deposit
21 programs and services consistent with the purposes and objectives of sections 166.500 to

22 **166.556;**

23 **(2) Promulgate reasonable rules and regulations and establish policies and**
24 **procedures to implement sections 166.500 to 166.556, to permit the deposit program to**
25 **qualify as a qualified state tuition program pursuant to Section 529 of the Internal**
26 **Revenue Code and to ensure the deposit program's compliance with all applicable laws;**

27 **(3) Develop and implement educational programs and related informational**
28 **materials for participants, either directly or through a contractual arrangement with a**
29 **financial institution or other entities for deposit educational services, and their families,**
30 **including special programs and materials to inform families with children of various ages**
31 **regarding methods for financing education and training beyond high school;**

32 **(4) Enter into an agreement with any financial institution, entity, or business**
33 **clearinghouse for the operation of the deposit program pursuant to sections 166.500 to**
34 **166.556; providing however, that such institution, entity, or clearinghouse shall be a**
35 **private for-profit or not-for-profit entity and not a government agency. No more than one**
36 **board member may have a direct interest in such institution, entity, or clearinghouse. Such**
37 **institution, entity, or clearinghouse shall implement the board's policies and administer the**
38 **program for the board and with electing depository institutions and others;**

39 **(5) Enter into participation agreements with participants;**

40 **(6) Accept any grants, gifts, legislative appropriations, and other moneys from the**
41 **state, any unit of federal, state, or local government or any other person, firm, partnership,**
42 **or corporation for deposit to the account of the deposit program;**

43 **(7) Invest the funds received from participants in appropriate investment**
44 **instruments to be held by depository institutions or directly deposit such funds in**
45 **depository institutions as provided by the board and elected by the participants;**

46 **(8) Make appropriate payments and distributions on behalf of beneficiaries**
47 **pursuant to participation agreements;**

48 **(9) Make refunds to participants upon the termination of participation agreements**
49 **pursuant to the provisions, limitations, and restrictions set forth in sections 166.500 to**
50 **166.556 and the rules adopted by the board;**

51 **(10) Make provision for the payment of costs of administration and operation of**
52 **the deposit program;**

53 **(11) Effectuate and carry out all the powers granted by sections 166.500 to 166.556,**
54 **and have all other powers necessary to carry out and effectuate the purposes, objectives,**
55 **and provisions of sections 166.500 to 166.556 pertaining to the deposit program;**

56 **(12) Procure insurance, guarantees, or other protections against any loss in**
57 **connection with the assets or activities of the deposit program, as the members in their best**

58 judgment deem necessary;

59 (13) To both adopt and implement various methods of transferring money by
60 electronic means to efficiently transfer funds to depository institutions for deposit, and in
61 addition or in the alternative, to allow funds to be transferred by agent agreements,
62 assignment, or otherwise, provided such transfer occurs within two business days;

63 (14) To both adopt and implement methods and policies designed to obtain the
64 maximum insurance of such funds for each participant permitted and provided for by the
65 Federal Deposit Insurance Corporation, or any other federal agency insuring deposits, and
66 taking into consideration the law and regulation promulgated by such federal agencies for
67 deposit insurance.

68 3. Four members of the board shall constitute a quorum. No vacancy in the
69 membership of the board shall impair the right of a quorum to exercise all the rights and
70 perform all the duties of the board. No action shall be taken by the board except upon the
71 affirmative vote of a majority of the members present, except as otherwise provided by law.

72 4. The board shall meet within the state of Missouri at the time set at a previously
73 scheduled meeting or by the request of any four members of the board. Notice of the
74 meeting shall be delivered to all other trustees in person or by depositing notice in a United
75 States post office in a properly stamped and addressed envelope not less than six days prior
76 to the date fixed for the meeting. The board may meet at any time by unanimous mutual
77 consent. There shall be at least one meeting in each quarter.

78 5. The funds shall be invested only in those investments which a prudent person
79 acting in a like capacity and familiar with these matters would use in the conduct of an
80 enterprise of a like character and with like aims, as provided in section 105.688, RSMo, as
81 a means to hold funds until they are placed in a Missouri depository institution as a
82 deposit. The board may delegate to duly appointed representatives of financial institutions
83 authority to act in place of the board in the investment and reinvestment of all or part of
84 the moneys and may also delegate to such representatives the authority to act in place of
85 the board in the holding, purchasing, selling, assigning, transferring, or disposing of any
86 or all of the investments in which such moneys shall have been invested, as well as the
87 proceeds of such investments and such moneys, however, such investments shall be limited
88 to certificates of deposit and other deposits in federally insured depository institutions.
89 Such representatives shall be registered as "qualified student deposit advisors on section
90 529 plans" with the board and such board shall, by rule, develop and administer
91 qualification tests from time to time to provide representatives the opportunity to qualify
92 for this program. In exercising or delegating its investment powers and authority,
93 members of the board shall exercise ordinary business care and prudence under the facts

94 and circumstances prevailing at the time of the action or decision. No member of the board
95 shall be liable for any action taken or omitted with respect to the exercise of, or delegation
96 of, these powers and authority if such member shall have discharged the duties of his or
97 her position in good faith and with that degree of diligence, care, and skill which a prudent
98 person acting in a like capacity and familiar with these matters would use in the conduct
99 of an enterprise of a like character and with like aims.

100 6. No board member or employee of the deposit program shall personally receive
101 any gain or profit from any funds or transaction of the deposit program as a result of his
102 or her membership of the board. Any board member, employee, or agent of the deposit
103 program accepting any gratuity or compensation for the purpose of influencing such board
104 member's, employee's, or agent's action with respect to choice of intermediary, including
105 any financial institution, entity or clearinghouse, for the funds of the deposit program shall
106 thereby forfeit the office and in addition thereto be subject to the penalties prescribed for
107 bribery. However, a board member who is regularly employed directly or indirectly by
108 a financial institution may state that institution's interest and absent himself from voting.

109 7. Depository institutions originating the deposit program shall be the agent of the
110 board and offer terms for certificates of deposit and other deposits in such program as
111 permitted by the board, subject to a uniform interest rate disclosure as defined in federal
112 regulations of the Board of Governors of the Federal Reserve System, specifically Federal
113 Reserve Regulation DD, as amended from time to time. The board shall establish various
114 deposit opportunities based on amounts deposited and length of time held that are
115 uniformly available to all depository institutions that elect to participate in the program,
116 and the various categories of fixed or variable rates shall be the only interest rates available
117 under this program. A depository institution that originates the deposit as agent for the
118 board and participates in the program shall receive back the certificate of deposit or other
119 deposit, provided such depository institution has a CAMELS rating of 1 or 2, or, a
120 comparable regulatory rating that is the substantial equivalent of the CAMELS rating.
121 Such deposit and certificate of deposit shall be titled in the name of the clearing entity for
122 the benefit of the participant, and shall be insured as permitted by any agency of the
123 federal government that insures deposits in depository institutions. Any depository
124 institution or intermediary that fails to comply with these provisions shall forfeit its right
125 to participate in this program; provided however, the board shall be the sole and exclusive
126 judge of compliance except as otherwise provided by provisions in Section 529 of the
127 Internal Revenue Code and the Internal Revenue Service enforcement of such section.

166.520. 1. The board may enter into deposit program participation agreements
2 with participants on behalf of beneficiaries pursuant to the provisions of sections 166.500

3 to 166.556, including the following terms and conditions:

4 (1) A participation agreement shall stipulate the terms and conditions of the deposit
5 program in which the participant makes contributions;

6 (2) A participation agreement shall specify the method for calculating the return
7 on the contribution made by the participant as otherwise provided in sections 166.500 to
8 166.556;

9 (3) The execution of a participation agreement by the board shall not guarantee
10 that the beneficiary named in any participation agreement will be admitted to an eligible
11 educational institution, be allowed to continue to attend an eligible educational institution
12 after having been admitted or will graduate from an eligible educational institution;

13 (4) A participation agreement shall disclose to participants the risk associated with
14 depositing moneys with the board, including information on federal insured deposit
15 availability and coverage and penalties for withdrawal before the deposit has matured;

16 (5) Participation agreements shall be organized and presented in a way and with
17 language that is easily understandable by the general public; and

18 (6) A participation agreement shall clearly and prominently disclose to participants
19 the existence of any fee or similar charge assessed against the accounts of the participants
20 for administration or services.

21 2. The board shall establish the maximum amount which may be contributed
22 annually by a participant with respect to a beneficiary.

23 3. The board shall establish a total contribution limit for deposit accounts
24 established under the deposit program with respect to a beneficiary to permit the deposit
25 program to qualify as a qualified state tuition program pursuant to Section 529 of the
26 Internal Revenue Code. No contribution may be made to a deposit account for a
27 beneficiary if it would cause the balance of all deposit accounts of the beneficiary to exceed
28 the total contribution limit established by the board. The board may establish other
29 requirements that it deems appropriate to provide adequate safeguards to prevent
30 contributions on behalf of a beneficiary from exceeding what is necessary to provide for
31 the qualified higher education expenses of the beneficiary.

32 4. The board shall establish the minimum length of time that contributions and
33 earnings must be held by the deposit program to qualify pursuant to section 166.435. Any
34 contributions or earnings that are withdrawn or distributed from a deposit account prior
35 to the expiration of the minimum length of time, as established by the board, shall be
36 subject to a penalty pursuant to section 166.530.

166.525. All money paid by a participant in connection with participation
2 agreements shall be deposited as received and shall be promptly invested by the board or

3 may be directly deposited by the board's agents. Contributions and earnings thereon
4 accumulated on behalf of participants in the deposit program may be used, as provided in
5 the participation agreement, for qualified higher education expenses.

166.530. Any participant may cancel a participation agreement at will. The board
2 shall impose a penalty equal to or greater than ten percent of the earnings of an account
3 for any distribution that is not:

4 (1) Used exclusively for qualified higher education expenses of the designated
5 beneficiary;

6 (2) Made because of death or disability of the designated beneficiary;

7 (3) Made because of the receipt of scholarship by the designated beneficiary;

8 (4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal
9 Revenue Code; or

10 (5) Held in the fund for the minimum length of time established by the board.

166.540. The assets of the deposit program shall at all times be preserved, invested,
2 and expended only for the purposes set forth in this section and in accordance with the
3 participation agreements, and no property rights therein shall exist in favor of the state.

166.545. Any rule or portion of a rule, as that term is defined in section 536.010,
2 RSMo, that is promulgated pursuant to sections 166.500 to 166.556 shall become effective
3 only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All
4 rulemaking authority delegated prior to August 28, 2003, is of no force and effect and
5 repealed; however, nothing in this section shall be interpreted to repeal or affect the
6 validity of any rule filed or adopted prior to August 28, 2003, if it fully complied with the
7 provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536, RSMo, are
8 nonseverable and if any of the powers vested with the general assembly pursuant to
9 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
10 are subsequently held unconstitutional, then the grant of rulemaking authority and any
11 rule proposed or adopted after August 28, 2003, shall be invalid and void.

166.550. The Missouri state auditor shall, on a semiannual basis, review the
2 financial status and investment policy of the program as well as the participation rate in
3 the program. The auditor shall also review the continued viability of the program and the
4 administration of the program by the board. The auditor shall report the findings
5 annually to the board, which shall subsequently disclose such findings at a public meeting.

166.555. Money accruing to and deposited in individual deposit accounts shall not
2 be part of total state revenues as defined in sections 17 and 18 of article X of the
3 Constitution of the state of Missouri and the expenditure of such revenues shall not be an
4 expense of state government under section 20 of article X of the Constitution of the state

5 of Missouri.

2 **166.556. All personally identifiable information concerning participants and**
3 **beneficiaries of accounts established within the Missouri higher education deposit program**
4 **pursuant to sections 166.500 to 166.556 shall be confidential, and any disclosure of such**
5 **information shall be restricted to purposes directly connected with the administration of**
6 **the program.**